

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WILLIE SMITH,

Plaintiff,

v.

HOMES, et al.,

Defendants.

Case No. 3:13-cv-00202-MMD-WGC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
WILLIAM GL. COBB

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (dkt. no. 103) ("R&R") relating to Defendants' Motion to Dismiss or in the Alternative Motion for Summary Judgment. (Dkt. no. 85). Plaintiffs had until December 28, 2015, to file an objection. No objection to the R&R has been filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to

1 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
2 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
3 view that district courts are not required to review "any issue that is not the subject of an
4 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
5 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
6 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
7 which no objection was filed).

8 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
9 determine whether to adopt Magistrate Judge Cobb's R&R. Defendants moved for
10 dismissal, or in the alternative, for summary judgment on Plaintiff's remaining retaliation
11 claim against Defendant Homes, and against Defendant Williams based on supervisory
12 liability. (Dkt. no. 85.) The Magistrate Judge treated Defendants' motion as a motion for
13 summary judgment, and recommends granting the motion. (Dkt. no. 103.) Upon
14 reviewing the R&R and underlying briefs, this Court agrees with the Magistrate Judge
15 that the undisputed evidence does not support a claim for retaliation against Homes;
16 and without any underlying constitutional violation, Williams cannot be liable as a
17 supervisor.


18 It is therefore ordered, adjudged and decreed that the Report and
19 Recommendation of Magistrate Judge William G. Cobb (dkt. no. 103) be accepted and
20 adopted in its entirety.

21 It is ordered that Defendants' Motion to Dismiss or in the Alternative Motion for
22 Summary Judgment (dkt. no. 85) is granted.

23 It is further ordered that Plaintiff's Motion to Amend the Complaint (dkt. no. 100) is
24 denied.

25 The Clerk is directed to enter judgement accordingly and close this case.

26 DATED THIS 22nd day of January 2016.

27 
28 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE